

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION II****290 BROADWAY****NEW YORK, NEW YORK 10007-1866**

DEC 11 2009

**GENERAL NOTICE LETTER  
URGENT LEGAL MATTER  
PROMPT REPLY NECESSARY  
CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

PMC, Inc.  
12243 Branford Street  
Sun Valley, CA 91352  
Attn: Philip E. Kamins, CEO

Re: Diamond Alkali Superfund Site  
Notice of Potential Liability for  
Response Actions in the Lower Passaic River Study Area, New Jersey

Dear Mr. Kamins:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release and/or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*

EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants into the 17-mile stretch of the river known as the Lower Passaic River Study Area ("LPRSA"), which is part of the Diamond Alkali Superfund Site ("Site") located in Newark, New Jersey. Based on the results of CERCLA remedial investigation activities and other environmental studies, EPA has further determined that contaminated sediments and other potential sources of hazardous substances exist along the entire 17-mile tidal reach of the Lower Passaic River.

By this letter, EPA is notifying PMC, Inc. ("PMC") of its potential liability relating to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). EPA is seeking your cooperation in an innovative approach to environmental remediation and restoration activities for the Lower Passaic River.

EPA has formed a partnership with the U.S. Army Corps of Engineers ("USACE") and its local sponsor, the State of New Jersey, to identify and address water quality improvement, remediation, and restoration opportunities in the LPRSA. This governmental partnership is consistent with a national Memorandum of Understanding ("MOU") executed on July 2, 2002 between EPA and USACE, which calls for the two agencies to cooperate, where appropriate, on environmental remediation and restoration of degraded urban rivers and related resources.

The first phase of the Lower Passaic River Restoration Project involves investigation of environmental impacts and pollution sources and the evaluation of alternative actions, leading to recommendations of environmental remediation and restoration activities. The study is being conducted by EPA pursuant to CERCLA and by the USACE pursuant to the federal Water Resources Development Act ("WRDA"). Currently, the CERCLA work consists of two elements: the remedial investigation and feasibility study ("RI/FS") of the 17-mile LPRSA, which is being performed by a group of potentially responsible parties ("PRPs") known as the Cooperating Parties Group ("CPG") under EPA's oversight, and the focused feasibility study ("FFS") that EPA is performing with respect to an eight-mile portion of the LPRSA. The FFS will evaluate the possibility of undertaking a source control "early action" in the LPRSA, i.e., a remedial action that would be performed prior to the remedy selected as a result of the RI/FS for the full 17-mile LPRSA.

Under Sections 106(a) and 107(a) of CERCLA, PRPs may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up a site, unless the PRP can show divisibility, or any of the statutory defenses available under CERCLA. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

Under CERCLA, PRPs can include current and past owners and operators of a facility, as well as persons who arranged for the disposal or treatment of hazardous substances at a site, or the transport of hazardous substances to the site. Based on information available to EPA, EPA has concluded that hazardous substances were released from the PMC Klear Kast facility located at 450 Schuyler Avenue, Kearny, New Jersey, into the LPRSA. Hazardous substances, pollutants and contaminants released into the river may present a risk to the environment and the humans who ingest contaminated fish and shellfish. As the owner and operator of the facility, PMC may be potentially liable for response costs that the government has incurred or may incur at the Site, and for the cleanup of the Site.

Please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy. You are also requested to preserve and retain any documents now in the possession or control of your Company or its agents that relate in any manner to your facility or the Site or to the liability of any person under CERCLA for response actions or response costs at or in connection with the facility or the Site, regardless of any corporate document retention policy to the contrary.

Enclosed is a list of the other PRPs who have received notices of potential liability to date. EPA is continuing its efforts to locate additional parties that have released hazardous substances, directly or indirectly, into the LPRSA. Exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site. Please be advised that notice of your potential liability at the Site may be forwarded to all parties on this list, and to the Natural Resource Trustees.

We request that you become a "cooperating party" for the Lower Passaic River Restoration Project by participating in the CPG. As a cooperating party, you, along with many other such parties, would perform and fund the CERCLA RI/FS. Eventually, a remedial action or actions will be selected for the LPRSA pursuant to CERCLA, and EPA expects that the WRDA process will be used to identify a restoration program. However, EPA currently is asking only that the cooperating parties commit to undertaking the RI/FS. For those who choose not to cooperate, EPA may apply the CERCLA enforcement process, pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and § 9607(a) and other laws.

We strongly encourage you to contact the CPG to discuss your participation. You may do so by contacting:

William H. Hyatt, Esq.  
Common Counsel for the Lower Passaic River Study Area Cooperating Parties Group  
Kirkpatrick & Lockhart LLP  
One Newark Center, 10<sup>th</sup> Floor  
Newark, New Jersey 07102  
(973) 848-4045  
william.hyatt@klgates.com

Written notification should be provided to EPA and Mr. Hyatt documenting your intention to join the CPG and settle with EPA no later than 30 calendar days from your receipt of this letter. The result of any agreement between EPA and your Company as part of the CPG will need to be memorialized in an amendment to the Administrative Order on Consent pursuant to which the CPG is performing the RI/FS. Your written notification to EPA should be mailed to:

Sarah Flanagan, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway - 17<sup>th</sup> Floor  
New York, New York 10007-1866

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record file and the Site file are located at EPA's Region 2 Superfund Records


Center, at 290 Broadway, New York, NY on the 18<sup>th</sup> floor. You may call the Records Center at (212) 637-4308 to make an appointment to view the administrative record and/or the Site file for the Diamond Alkali Site, Passaic River.

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at the Site may be substantially limited. If you believe, and can document, that you fall within that category, please inform Sarah Flanagan and William Hyatt in writing at the addresses shown above. You will be asked to submit financial records including federal income tax returns and audited financial statements to substantiate such a claim.

Finally, as you may be aware, the Superfund Small Business Liability Relief and Brownfields Revitalization Act became effective on January 11, 2002. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

Inquiries by counsel or inquiries of a legal nature should be directed to Ms. Flanagan at (212) 637-3136. Questions of a technical nature should be directed to Stephanie Vaughn, Remedial Project Manager, at (212) 637-3914.

Sincerely yours,

  
Ray Basso, Strategic Integration Manager  
Emergency and Remedial Response Division

Enclosure